

ATTACHMENT 65

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS: MDL NO. 2002
ANTITRUST LITIGATION 08-MDL-02002

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PHILADELPHIA, PA

MAY 4, 2018
DAY THREE

BEFORE: THE HONORABLE GENE E.K. PRATTER, J.

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TRIAL TRANSCRIPT

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Official Court Reporter
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(Transcript produced by mechanical shorthand via C.A.T.)

1 THE COURT: Everything okay?

2 THE WITNESS: Um-hum.

3 THE COURT: Keep your voice up.

4 And, Mr. Neuwirth, you may proceed.

5 MR. NEUWIRTH: Thank you very much, Your Honor.

6 Good afternoon, ladies and gentlemen.

7 DIRECT EXAMINATION

8 BY MR. NEUWIRTH:

9 Q. Mr. Sparboe, in what state do you live?

10 A. I live in Des Moines, Iowa.

11 Q. Thank you.

12 And is there any relationship between your last name

13 and the egg producer Sparboe?

14 A. There is.

15 Q. And what is that relationship?

16 A. I am the eldest son of Bob Sparboe who started the

17 business.

18 Q. Now, is the Sparboe egg producer company still a

19 Defendant in this lawsuit?

20 A. No.

21 Q. And why is it no longer a Defendant in this lawsuit?

22 A. We came to a settlement.

23 Q. And are you here today under the terms of that Settlement

24 Agreement?

25 A. I am.

1 What was the purpose of those meetings?

2 A. The purpose of the meeting was to go over the case and

3 the terms of understanding the flow of the case and in order

4 to fulfill our agreement in the case.

5 Q. And how long were we together each time that we met in

6 those two recent meetings?

7 A. The first time I believe was about four hours, and the

8 second time was also about four hours, I believe.

9 Q. Thank you.

10 Now, Mr. Sparboe, where did you grow up?

11 A. I grew up in Litchfield, Minnesota.

12 Q. And was this near -- did the Sparboe company exist at

13 this time?

14 A. Yes.

15 Q. And was Minnesota where you grew up close to the

16 business?

17 A. Yes.

18 Q. And can you tell me briefly about your education?

19 A. I have a high school -- graduated from high school from

20 Litchfield High School in 1975. I went to four years at the

21 University of Minnesota. I got a Bachelor's Business

22 Administration. And then in 1992, I got a Master's in

23 Business Administration from the University of Redlands,

24 California.

25 Q. Okay. So you mentioned that you received that Master's

1 Q. Now, does that agreement require you to testify in any

2 particular way?

3 A. No.

4 Q. Does that agreement call for you in any way to say things

5 that are not true when you testify?

6 A. No.

7 Q. Do you understand that you are testifying here under an

8 oath that you will tell the truth?

9 A. I do.

10 Q. And as you sit here today, is there any reason related to

11 the Settlement Agreement or anything else that makes you feel

12 you will not be able to tell the truth in response to the

13 questions I will be asking you?

14 A. No.

15 Q. Okay. Now, is this the first time that you and I have

16 met?

17 A. No.

18 Q. And when did we meet previously?

19 A. We met, I believe, a week or two ago in Minneapolis.

20 Q. And is that the only time we've previously met?

21 A. Then we met one further time in Des Moines, more

22 recently, about a week ago.

23 Q. And do you recall if we also met a number of years ago?

24 A. Yeah. Nine years ago.

25 Q. Okay. And you mentioned two relatively recent meetings.

1 of Business Administration in 1992.

2 Can you tell the jury what jobs you had after

3 receiving these degrees?

4 A. I began in 1979 through approximately the middle of 1984

5 with the International Harvester Company. That company had

6 extreme financial difficulties, and I left the organization.

7 In 1985 and in 1986, I worked for the Minnesota House of

8 Representatives. I ran the banking and insurance committee

9 for the House. And then in 1986, we lost control of the House

10 of Representatives. And the day after the election, I found a

11 note on my desk stating that the new speaker elect would no

12 longer have my -- need my services at the end of that year.

13 Q. Okay. And after that work in the House of

14 Representatives in Minnesota, were you employed thereafter?

15 A. No. I immediately found employment at the John Deere

16 company in Des Moines. I was sent to Wichita, Kansas during

17 the heart of the ag crisis. And farmers, wheat farmers in

18 particular, were having a terrible time, and my job was to

19 spend the next two years working with farmers. We did

20 everything we could to either refinance, delay payments. I

21 had 660 farm families that I met with in two years.

22 Q. Okay. And what was the period of time that you did this

23 work with John Deere?

24 A. I was employed from 1980 -- I'm sorry. Yeah, 1987 to

25 1999.

1 Q. Okay. And then what did you do next after your work at
 2 John Deere?
 3 A. In 1999, in the spring of that year, I had had many
 4 conversations with my father and my sister, and I was invited
 5 to come back into the family business, which I did. And I
 6 came back in the sales and marketing department, essentially
 7 going after large grocery store chains for their business.
 8 Q. Okay. And so these large grocery store chains were
 9 customers of Sparboe?
 10 A. Some were and some weren't.
 11 Q. And did you get to know the purchasing personnel at these
 12 grocery chains in that capacity?
 13 A. Yes. Also food service companies, the people that sell
 14 eggs to hotels, universities, cafeterias.
 15 Q. And so these food service companies also were customers
 16 of Sparboe; is that correct?
 17 A. Right.
 18 Q. Or potential customers?
 19 A. Correct.
 20 Q. Okay. Now, you mentioned that you grew up near the
 21 Sparboe company facilities in Minnesota.
 22 A. Right.
 23 Q. Did you become familiar with those facilities as you were
 24 growing up?
 25 A. Yeah. I worked -- I worked every summer, I worked

1 The eggs were collected by egg belts. The feed was delivered
 2 to the hens on feed belts. It was very modern. We had one of
 3 the most modern facilities in the mid-'70s.
 4 Q. And you described the size of these henhouses.
 5 Approximately how many hens, laying hens would be in each one
 6 of these henhouses?
 7 A. In the '70s or today?
 8 Q. Well, why don't we talk about -- today from the period of
 9 when you came back in 1999.
 10 A. Okay. Well, there's quite a variation, but in the
 11 facilities that we own, I would say the average size barn
 12 would be about 100,000 chickens. Some are larger; some are
 13 smaller.
 14 Q. And I'd like you to focus now on 1999 --
 15 A. Um-hum.
 16 Q. -- when you first came back to Sparboe.
 17 How would you characterize the way the laying hens
 18 were living in those houses?
 19 A. Well, we -- we live in a northern climate in Minnesota,
 20 and so the houses during the winter are kept very warm. The
 21 facilities were -- there was plenty of air moving. Large huge
 22 fans kept the chickens very comfortable. There would be
 23 anywhere from four to five, sometimes six birds per cage.
 24 That's better for the birds, actually, than having them down
 25 on the ground because there's more mortality.

1 weekends, I was employed, you know -- when I wasn't in school,
 2 I was employed. I was in sports also, but we worked a lot in
 3 our family.
 4 Q. And is it correct that when you returned to Sparboe in
 5 1999, you also had an opportunity to see and be familiar with
 6 the company's facilities, at least in Minnesota?
 7 A. Correct.
 8 Q. Okay. Now, was Sparboe a small family farm?
 9 A. No. The firm started in 1954 when my father came back
 10 from the Korean conflict, and it had grown to a significant
 11 business by the mid-'70s. And then when I came back into the
 12 business, it was maybe the eighth or ninth largest firm in the
 13 industry. It's a pretty significant business.
 14 Q. And at that time when you came back, do you know
 15 approximately how many hens or layers the company had?
 16 A. I believe it was in the range of 7- or 8 million at that
 17 time.
 18 Q. Okay. Now, what were the facilities like where these
 19 hens were kept?
 20 A. Most of our facilities were called high-rise houses. So
 21 the hens were in cages, approximately 15 or 20 feet above the
 22 ground, and then when they would relieve themselves, the
 23 manure would drop into pits below. The barns were
 24 approximately 600 feet long or two football fields,
 25 approximately 48 feet wide, very technologically advanced.

1 Chickens tend to have dominant chickens and weak
 2 chickens, and in the cage, there's less mortality than if
 3 they're down on the ground because the dominant hens tend to
 4 crowd out the weak hens from getting to the feeders and
 5 getting to the watering cups. So this was the -- we felt the
 6 best technology for the hen.
 7 Q. At that time?
 8 A. At that time.
 9 Q. Which was 1999?
 10 A. Correct.
 11 Q. Okay. Were those facilities crowded. Is it fair to say?
 12 A. I'm not sure what you mean by "crowded." I mean, I would
 13 say that our barns were about the same as everyone else in the
 14 industry.
 15 Q. Okay. And at this time, how many eggs per week did
 16 Sparboe produce?
 17 A. Let's see. I can back it into from a year. We would
 18 produce about 160 million dozens on a yearly basis, divide
 19 that by 52, I guess, three and a half million per week.
 20 Q. Okay. I think you said about 160 million per year?
 21 A. Yeah.
 22 Q. 160 million dozen per year?
 23 A. Right. That's a rough guess.
 24 Q. Okay. And when you came to Sparboe, came back to Sparboe
 25 in 1999, did Sparboe belong to any trade organizations?

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1 A. We belonged in the United States to the United Egg
 2 Producers and had been a member for as long as I remember. My
 3 father also belonged to the International Egg Commission,
 4 which is a membership of producers from all over the world.
 5 Q. Okay. Let's focus first on the United Egg Producers.
 6 What did you understand the United Egg Producers to be?
 7 A. The United Egg Producers, from my understanding, going
 8 into that year was a cooperative of egg producers, both small
 9 and large, although most were large. The trade association
 10 was involved in many things, legislation, consumer issues, a
 11 lot of different things.
 12 And I had been to their meetings, both in college
 13 and even through the years when I was working for John Deere.
 14 I often went with my father.
 15 Q. Okay. And so did you have any understanding at this time
 16 of roughly what percentage of eggs produced in the United
 17 States were produced by UEP members?
 18 A. I believe the number was between 80 and 90 percent were
 19 members. So it was significant.
 20 Q. So just to make sure I'm understanding your answer,
 21 producers who were responsible for 80 to 90 percent of the
 22 eggs produced in the United States were members of the United
 23 Egg Producers?
 24 A. Correct.
 25 Q. Okay. Now, did Sparboe, as a member of the United Egg

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1 Producers, receive communications from the United Egg
 2 Producers?
 3 A. Yeah. There was a monthly newsletter that came out every
 4 month. At that time the Internet, of course, was just
 5 rolling, but I believe there was also e-mail communications in
 6 '99. And those were the two main -- main ways that the trade
 7 association communicated back to the members.
 8 Q. And you mentioned the newsletter. Do you recall what was
 9 the name of that newsletter?
 10 A. UTP Voices, I think -- United Voices.
 11 Q. And I think you mentioned that that came about once a
 12 month, to your recollection?
 13 A. Yeah, there would be sometimes intermittent stuff that
 14 would come out, but they had a monthly newsletter that they
 15 would send out.
 16 Q. And do you know whether that newsletter went to other
 17 members of the United Egg Producers besides Sparboe?
 18 A. It was my understanding that everyone got the newsletter.
 19 Q. When you say "everyone," you mean all the members?
 20 A. All the members.
 21 Q. Okay. And was it your understanding that this newsletter
 22 was produced at the United Egg Producers?
 23 A. Correct. I think through all the years, they were based
 24 out of Atlanta, if I'm not mistaken.
 25 Q. Now, is it correct that from your work at Sparboe, you

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1 are familiar with the term "molting"?
 2 A. Yes.
 3 Q. Okay. What is molting?
 4 A. Molting is a practice where producers would scale back
 5 feed to the hen and bring down the lighting for the hens to
 6 allow the hen to go into a period of rest. I'm not a poultry
 7 scientist by education, but my understanding is that chickens
 8 and other birds molt in the wild naturally, but in the
 9 industry that we're in, molting was used to rejuvenate the
 10 hens production, productivity.
 11 A hen would lay eggs for about a year and be very,
 12 very productive and lay a lot of eggs at the beginning, and
 13 over time, the egg numbers would drop. She would eat the same
 14 amount of feed, but after a year, we were getting 20 or
 15 30 percent less eggs. The molt then would rejuvenate the hen.
 16 It would last about a week, I believe, and they would start
 17 laying almost at the same level as when they were very young.
 18 Q. And so when you refer to a week, this would be the week
 19 where the feed would be reduced or eliminated?
 20 A. Yeah, I believe there would be two or three days where
 21 food would be -- or feed would be pulled away from the
 22 chicken, and then after two or three days, the feed would be
 23 reintroduced, the light would be increased, and then the hen
 24 would start laying eggs again.
 25 Q. And do you recall Sparboe, when you were there, ever

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1 receiving any messages from United Egg Producers related to
 2 molting?
 3 A. Yes.
 4 Q. And what do you recall about those messages that you
 5 received from the United Egg Producers that you saw?
 6 A. The period of time from approximately 1999 to 2001 or '2
 7 was very, very poor profitability in the egg industry, and
 8 quite often United Egg Producers would challenge egg producers
 9 in the industry and in the membership to increase molting or
 10 to pursue molting faster in order to take birds out of
 11 production, because we had too many layers. Too much supply
 12 had increased the situation where prices had been very poor
 13 for two or three years, and people in the industry were really
 14 hurting.
 15 Q. And so what is your understanding of the reason why
 16 United Egg Producers would ask, for example, that companies
 17 like Sparboe molt early?
 18 A. Because --
 19 MR. KING: Objection.
 20 THE COURT: You just asked what his understanding
 21 was?
 22 MR. NEUWIRTH: Yes, I asked what his understanding
 23 was.
 24 MR. KING: I object on foundation.
 25 THE COURT: Overruled.

1 THE WITNESS: In these years, there were too many
2 eggs, too many layers, too many eggs. Prices were poor, and
3 it was my understanding that the trade association was
4 appealing to the members to, amongst other things, increase
5 molting and do it sooner than they normally would have done it
6 in the normal course of business.

7 BY MR. NEUWIRTH:

8 Q. And why -- what was your understanding of why they --

9 A. Because the bird would --

10 THE COURT: Sir, let Mr. Neuwirth finish.

11 THE WITNESS: I'm sorry.

12 MR. NEUWIRTH: I'm sorry if I wasn't clear.

13 BY MR. NEUWIRTH:

14 Q. What was your understanding of why under these
15 circumstances an early molt would be suggested?

16 A. Because the hen would stop laying eggs completely for a
17 period of at least a week, perhaps two weeks until she
18 rejuvenated her system and until she started laying eggs
19 again.

20 Q. And what was the reason that the United Egg Producers
21 would want hens to stop laying eggs?

22 A. Because typically in the newsletter, there was a
23 recognition of the poor markets that the producers were
24 experiencing, and this was one way to reduce supply. It was
25 to increase the number of birds in the molt or early molt,

1 which would then reduce the egg supply.

2 Q. And what would be the reason that -- what is your
3 understanding of the reason why there was a recommendation to
4 reduce the egg supply in this way?

5 A. To increase prices.

6 Q. Now, when hens are put in a henhouse, the types of
7 henhouses you describe, for how long do the hens in the
8 henhouse typically stay there?

9 A. Hens go into the henhouse at about 20 to 22 weeks of age,
10 and they are then in production approximately until they're
11 two years old.

12 Q. And so is it correct to understand from that that they're
13 in the henhouses typically for a period of just under two
14 years?

15 A. Yeah. Two years less five months.

16 Q. Okay. And what typically happens to the hens in a
17 henhouse at the end of that cycle?

18 A. Depending on the geography that you're in in the United
19 States, in most of the country, there were companies that
20 would buy the old hens and process the meat and put the meat
21 into pot pies and into other food items. That was my
22 understanding.

23 Q. Were there any places where the industry would be the
24 typical practice, to your knowledge, to slaughter the hens at
25 the end of that cycle and dispose of them?

1 A. There were people located in parts of the country that
2 did not have access to what's called shackle time. Shackle
3 time is in the kill plans at the end of the processing plant.
4 There are plants all over the United States, and it is my
5 understanding that some producers would have to euthanize.

6 Q. And by "euthanize," you mean slaughter the hens?

7 A. Yes.

8 Q. Now, do you recall, in the United Voices newsletters that
9 you recall receiving, ever seeing any messages from the United
10 Egg Producers relating to the slaughter of hens?

11 A. Yes.

12 Q. And what do you recall seeing in the United Voices
13 newsletter related to the slaughter of hens during this period
14 when you had returned in 1999?

15 A. During this time, this distressed financial time, one of
16 the requests of the membership was to pull the birds out of
17 laying houses early. Another reason to decrease the supply
18 and thus potentially increase prices.

19 Q. And when you talk -- you said that this related to
20 slaughter. How does -- what is the connection you draw
21 between what you described as pulling them out of the houses
22 early and slaughter?

23 A. Well, if the normal schedule would be to bring the birds
24 out of that laying houses, perhaps at the end of the second
25 year, they would ask the membership to speed that up, perhaps,

1 a few weeks, and so if everybody did that, it would allow the
2 industry to take birds out of production and to potentially
3 reduce the number of eggs in the supply chain.

4 Q. Now, I think you indicated earlier that in addition to
5 these United Voices newsletters, there would sometimes, I
6 think to use your term, intermittently be other communications
7 from the United Egg Producers that Sparboe and other egg
8 producers would receive; is that correct?

9 A. Yeah. A lot of times, my father would get a lot of that
10 communications. I was in sales and marketing. I saw some of
11 them, not all of them.

12 Q. Do you recall ever seeing communications, other than
13 newsletters, that related to what you described as -- what you
14 described earlier concerning early molts or early
15 slaughtering?

16 A. Generally speaking, the United Egg Producers would have
17 one large annual meeting a year, and there would also be
18 regional meetings throughout the country, and throughout this
19 same time period, quite often at the end of the meeting, there
20 would be a request that the membership pay attention to the
21 molting issue, increasing molting, and also to bring the birds
22 out of the houses early, as a recognition of the poor prices
23 the industry was in. It was three or four of the toughest
24 years the egg industry had ever had.

25 Q. And when you say in recognition of the tough situation

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1 the industry was in, what would have been the purpose of, in
 2 that context, talking about early molting and early slaughter?
 3 A. The UEP would ask for members to pledge cooperation, to
 4 pledge to reduce -- to bring birds out of the houses early.
 5 There was no mandate, but they leaned -- you know, leaned on
 6 us in communications to molt early, to bring birds out of the
 7 houses early in order to reduce the egg supply.
 8 Q. Now, do you, in this -- with respect to early molting and
 9 early slaughter, do you recall anything about the phrase 555?
 10 A. Yeah. Typically the very last issue that would be dealt
 11 with in the meeting would be the head of UEP would stand up
 12 and -- perhaps the president or the chairman for that year
 13 would stand up and go over these very same points verbally,
 14 standing up in front of the entire membership, appealing to
 15 the membership to do these practices. 555, 55 were, I
 16 believe, reduce layers by 5 percent, molt 5 percent of the
 17 birds early, and 5 percent of the birds would be taken out of
 18 the houses early.
 19 Q. And do you recall when you came back to Sparboe in 1999,
 20 seeing documents where these types of plans would be reported
 21 to the members?
 22 A. They were in every newsletter that I saw.
 23 Q. Okay.
 24 MR. NEUWIRTH: May I approach, Your Honor?
 25 THE COURT: Yes.

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1 witness has ever seen the document as part of this discussion
 2 about the 555.
 3 MR. KING: Okay.
 4 THE COURT: Okay. Let me just see it.
 5 MR. NEUWIRTH: This mentions the Board of Directors
 6 had approved the following plan of action.
 7 THE COURT: Well, I'm -- just ask him if he's seen
 8 it.
 9 MR. NEUWIRTH: Okay.
 10 THE COURT: One baby step at a time.
 11 MR. NEUWIRTH: Thank you.
 12 (End of sidebar.)
 13 THE COURT: Go ahead.
 14 BY MR. NEUWIRTH:
 15 Q. Okay. Mr. Sparboe, I've received permission from the
 16 Court to show you a document. The sole purpose at this point
 17 of showing you the document is to ask if you can identify it
 18 as a document that you personally recall seeing when you were
 19 at Sparboe in 1999.
 20 A. Yes, I saw this.
 21 MR. NEUWIRTH: May I proceed, Your Honor?
 22 THE COURT: Yes.
 23 MR. NEUWIRTH: Your Honor, based on the information
 24 that Mr. Sparboe has provided so far and his testimony that he
 25 personally recalls having seen this document at Sparboe in

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1 MR. NEUWIRTH: I think we need to approach the Court
 2 for a question.
 3 THE COURT: Do you need me at the sidebar?
 4 MR. NEUWIRTH: I think so.
 5 THE COURT: Then you'd better bring your collection.
 6 MR. NEUWIRTH: Yes.
 7 (The following transpired at sidebar:)
 8 MR. NEUWIRTH: This was a document that you had
 9 ruled could not be used in opening.
 10 THE COURT: Yes.
 11 MR. NEUWIRTH: I believe I can establish that
 12 Mr. Sparboe saw this document. I believe he's laid a
 13 foundation.
 14 THE COURT: First ask him if he ever saw that.
 15 MR. NEUWIRTH: Okay.
 16 THE COURT: I mean, any --
 17 MR. KING: Can I see? I'm sorry. What document --
 18 what's the date of this document?
 19 MR. NEUWIRTH: I'm not sure, but it has a
 20 handwritten notation, March 1999.
 21 MR. KING: That's a problem. You can ask him, but
 22 if you try to introduce it, we will object. The conspiracy in
 23 this case as pleaded by the Plaintiffs begins in 2000. What's
 24 the basis that this out-of-court statement could go in?
 25 THE COURT: Right now he's going to find out if this

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1 1999, we would move for the admission into evidence of the
 2 document that's been marked as Plaintiffs' Exhibit 25.
 3 THE COURT: At this point, don't you want to ask the
 4 witness what it is?
 5 MR. NEUWIRTH: Certainly, Your Honor.
 6 BY MR. NEUWIRTH:
 7 Q. Can you describe, Mr. Sparboe, what this document is?
 8 A. This document would be, I guess, kind of an action alert
 9 letting membership know that based upon UEP's projections,
 10 they felt that the national flock was 8 million hens higher
 11 than perhaps it should have been, and they are asking for
 12 molting to be started five weeks ahead of schedule, that the
 13 slaughter of hens be initiated five weeks earlier than normal,
 14 and that they continue this program for five consecutive
 15 weeks.
 16 THE COURT: Now, is there an objection?
 17 MR. KING: Yes, Your Honor. Objection. Hearsay and
 18 relevance.
 19 THE COURT: I'm going to overrule the objection at
 20 this point.
 21 MR. NEUWIRTH: Thank you, Your Honor. We would ask
 22 Your Honor that -- to have the permission of the Court because
 23 we have a couple of questions about this document, if we could
 24 put it up for the jury to see?
 25 THE COURT: You may.

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1 MR. NEUWIRTH: Thank you, Your Honor.

2 BY MR. NEUWIRTH:

3 Q. And so, I think we see that it's got the title Supply

4 Demand Alert for all UEP Members. Is this the type of

5 document that you recall periodically receiving from the

6 United Egg Producers at Sparboe?

7 A. Yes.

8 Q. And it says that the UEP's Board -- down towards the box

9 it says that the UEP's Board of Directors has approved the

10 following plan of action. Do you see that?

11 A. Yes.

12 Q. Who were the members of UEP's Board of Directors?

13 A. The Board of Directors would be typically 15 members, all

14 significant contributors to the industry. Large companies,

15 influential companies within the industry. And then, of

16 course, the UEP's management staff.

17 Q. And when you talk about significant companies in the

18 industry, is it correct that you're talking about significant

19 egg producers?

20 A. Right.

21 Q. And I think you've already described the 555 and what the

22 document says about early molting and early slaughter, but I'd

23 like you to look below that where it says: The program is

24 voluntary, but your participation is critical to the success

25 of the program and profitable prices for everyone, especially

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1 Alert?

2 A. No.

3 Q. Now, you mentioned earlier that you recall seeing at

4 Sparboe the United Voices newsletter, which I think you said

5 came out monthly, correct?

6 A. (Witness nods.)

7 Q. I saw you nodding. Just for the court reporter --

8 A. Correct. Correct.

9 Q. Thank you.

10 Now, at this time, when you returned to Sparboe, do

11 you remember -- do you have a personal recollection of any

12 messages that were being included in these United Voices

13 newsletters?

14 A. What -- specifically, what kind of messages?

15 Q. Well, do you recall any messages related, for example, to

16 the supply of eggs?

17 A. Very often, a poultry scientist economist by the name of

18 Don Bell from the University of California Riverside would

19 project his opinion on the national flock, and the egg

20 industry is very, very sensitive to a change in supply. The

21 demand is very steady and consumer demand, but on the supply

22 side, if there are very minor changes in the supply of hens

23 and eggs, it has a very dramatic impact on the price of eggs.

24 Q. Okay. And so I think you -- you said that you recall

25 that these recommendations from Mr. Bell would sometimes be

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1 you.

2 When you reviewed this document, did you form an

3 understanding of what that statement meant?

4 A. I sure did.

5 Q. What did you understand it to mean?

6 A. It was an appeal to the membership that we were heading

7 into a very difficult low price market and United Egg

8 Producers was appealing to the membership to take whatever

9 actions they could to reduce supply in order to support the

10 markets.

11 Q. And what do you mean by "support the markets"?

12 A. Support the price. Increase the price by reducing the

13 total number of eggs being produced.

14 Q. And at this time, did you have an understanding of

15 whether Sparboe itself responded to this Supply Demand Alert?

16 A. Philosophically we never did. We believed, my father and

17 my sister and I believed, that the markets ought to dictate

18 prices. Buyers and sellers ought to dictate prices through

19 the markets, and that we should not be, as an industry, having

20 a call to action in order to adjust prices. That each

21 producer ought to produce for their own customers and that

22 there should be no manipulation of supply chain.

23 Q. And, again, I don't want you to speculate, but do you

24 have any firsthand knowledge of whether at this time other egg

25 producers besides Sparboe did respond to this Supply Demand

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1 included in the United Voices newsletters?

2 A. Correct.

3 Q. Do you recall from this period any recommendations that

4 were reported from Mr. Bell related to cage space for hens?

5 A. Yeah. There was, I think, an interest in potentially

6 allowing hens more space, and in the process of allowing hens

7 more space, you would be essentially removing some chickens

8 out of every cage, which would again reduce the total number

9 of birds in each house.

10 Q. And what -- did you have an understanding of what

11 Mr. Bell's relationship was with the United Egg Producers?

12 A. I always saw him as a tremendous poultry science resource

13 for the members. He was a poultry scientist. If we had

14 disease issues, if we had any kind of help we needed, Don Bell

15 was very, very well-versed in poultry science. He was from

16 California, but he could be retained to help an individual

17 producer and did so.

18 Q. Okay. So let me, for -- just for purposes of asking you

19 whether you have seen this before, provide you with a document

20 that's been marked for identification purposes only as

21 Plaintiffs' Exhibit 18.

22 And at this point, Mr. Sparboe, the sole question I

23 have for you is whether you recognize this as a document that

24 you personally saw when you were at Sparboe in 1999?

25 A. Yes.

1 Q. Okay. And can you identify what this document is?

2 A. It's -- it's a newsletter to the membership. It leads

3 off with the highlights of the issue. It talks about upcoming

4 area, geographical area meetings. It talks about molting and

5 then roller coaster prices, and so it would be an update to

6 the membership about the next time they would be getting

7 together but also what was on the minds of the management of

8 UEP.

9 Q. And is it correct that this is one of the monthly United

10 Voices newsletters?

11 A. Yes. Yes.

12 Q. And what is the date of this?

13 A. August the 2nd, 1999.

14 MR. NEUWIRTH: Your Honor, we would move for

15 admission into evidence of Plaintiffs' Exhibit 18.

16 MR. KING: No objection.

17 THE COURT: Very well. Admitted.

18 MR. NEUWIRTH: Thank you. And if it would please

19 the Court, we would ask for permission to put this document up

20 on the screen.

21 THE COURT: That's fine.

22 MR. NEUWIRTH: Thank you. Plaintiffs' Exhibit 18.

23 BY MR. NEUWIRTH:

24 Q. And I would like to direct your attention to page 3 of

25 the document where it says "page 3" in the upper right hand.

1 the nation's flock permanently. An early molt is only a

2 stopgap way of correcting the problem. Egg producers must be

3 encouraged to take a hard look at the profitability of

4 maintaining each of their older flocks during periods of

5 extremely low prices.

6 Do you recall reading that at the time?

7 A. Yes.

8 Q. And what was your understanding of what that meant when

9 you read it?

10 A. As the -- it simply means that Dr. Bell was suggesting

11 that as the hen ages, she produces less eggs, she's less

12 productive, and, therefore, you're feeding the hen the same

13 amount of feed, but you're getting less eggs. And toward the

14 end of the cycle, a hen might only produce 65 percent, whereas

15 at the beginning it might be closer to 95 percent. So he's

16 suggesting to the industry that one firmer way of reducing the

17 egg supply, in my opinion, is that we would take birds out of

18 production early, an early taking the hens out of the houses.

19 Q. And for the companies that slaughtered, what would that

20 mean?

21 A. Well, we would just have -- the egg industry has a cycle.

22 You have to put baby chicks in on one end and grow them and

23 have them ready to go. Dr. Bell's suggestion here was that we

24 would empty our houses early, but we may not have baby chicks

25 ready at 20 weeks to start laying eggs at that point in time.

1 And in the second column, do you see that the name

2 Don Bell appears approximately five or six lines down from the

3 top?

4 A. Correct. Yes. Correct.

5 Q. And do you see that it says Don Bell has suggested that

6 corrections in the nation's flock size can be attained by one

7 of several means? Do you see that?

8 A. Correct. Yes.

9 Q. What -- do you recall what you understood when you --

10 well, let me ask first: Do you recall reading about this

11 information from Mr. Bell?

12 A. Yes. Yes.

13 Q. And what did you understand when you read it at the time,

14 this sentence to be conveying?

15 A. I think Dr. Bell was putting on his economics hat and

16 suggesting to the industry that there were corrections needed

17 in the size of the national flock.

18 Q. Okay. Now, do you see Item Number 2 -- well, he says --

19 he says there are steps that can be taken. He says he's

20 suggested corrections -- I'm sorry. He has suggested that

21 corrections of the nation's flock size can be attained by one

22 of several means, and then he says "they include." Do you see

23 that?

24 A. Yes.

25 Q. And Item Number 2 says: Extra birds must be removed from

1 So essentially what he's arguing here is that the industry

2 have some of our barns sitting empty for a period of time.

3 Q. And what would be the reason to do that? That you

4 understood it?

5 A. To reduce the supply of hens.

6 Q. And why would you reduce the supply of hens, to your

7 understanding?

8 A. To firm up the price.

9 Q. Now, the fourth item, which has that little -- it looks

10 like there's a star on it, says: An industrywide policy of a

11 minimum floor space allowance would result in a more ideal

12 nation flock size. It is currently estimated that 15 to

13 20 percent of the nation's birds are housed at less than

14 48 square inches. If 48 square inches were adopted as the

15 minimum space allowance, millions of extra birds would be

16 eliminated.

17 Do you recall reading that at the time?

18 A. Yes.

19 Q. And what did you understand that to mean at that time?

20 A. Well, I think that he's challenging members of the

21 industry who perhaps were crowding their chickens, more

22 chickens in each cage, to reduce the number of birds in the

23 cages to a level of 48 square inches.

24 Q. And what is your understanding of why Mr. Bell was making

25 that recommendation?

1 A. Well, this is part of a series of four points that all
 2 address the same issue, and that is, we have too many hens.
 3 Q. And, again, what would be the reason that you would
 4 address floor space allowances if you're concerned about
 5 too --
 6 A. It's a much larger term solution for the industry,
 7 because molting and early kill only is a short-term solution;
 8 however, if a producer gives more room to his layers, then
 9 he's actually reducing and pulling birds out of the cage.
 10 They're giving more space to each hen, which then reduces the
 11 number of chickens.
 12 Q. And if you reduce the number of chickens, what does that
 13 mean?
 14 A. It increases the price.
 15 Q. Now, does this article which discusses
 16 Mr. Bell's recommendations here relating to cage space, do you
 17 recall it saying anything about animal welfare?
 18 A. I don't -- I don't think I do recall at this point in
 19 time.
 20 Q. You say you don't recall at all or you don't recall there
 21 being any mention of animal welfare?
 22 A. There were conversations about animal welfare issues
 23 going on in the industry at that time. However, they were, I
 24 think, initiated in Europe. In the summer of '99, there was
 25 an International Egg Commission meeting in Norway, and at that

1 academicians in poultry science to have their own committee
 2 working on this project, and three of those same scientists
 3 then joined our committee. I'm guessing we were about 12 or
 4 14 producer members, and then there were three poultry
 5 scientists and then Don Bell joined.
 6 Q. Now, do you recall that a point came where the Scientific
 7 Committee that you referenced made some recommendations?
 8 A. They did.
 9 Q. Okay. And do you recall that -- that these
 10 recommendations were -- the fact that they had been made was
 11 announced at a Board of Directors meeting of the UEP?
 12 A. Yes.
 13 Q. And do you recall personally attending a Board of
 14 Directors meeting of the United Egg Producers in early 2000 in
 15 Dallas, Texas?
 16 A. I believe I was at that meeting.
 17 Q. Okay. And do you recall being present at a meeting
 18 where -- where the scientific -- it was announced that the
 19 Scientific Committee had made certain recommendations related
 20 to animal welfare?
 21 A. Yes.
 22 Q. Okay. Let me, if it would please the Court, let me hand
 23 you a document again for the purpose of determining whether it
 24 is a document that you have seen previously.
 25 A. Yes.

1 meeting -- our family went. At that meeting, there were
 2 producers from all over the world, but in particular, in
 3 Europe, the animal welfare issue was far down the road farther
 4 than it was here, and producers in England and Germany and
 5 Holland and Italy were already facing this very issue.
 6 And so I think coincidentally people came back -- I
 7 came back from that meeting concerned that this animal welfare
 8 issue, bird husbandry, the basics of giving chickens a better
 9 life, better air quality, dealing with the manure better, was
 10 important for us to look at as a family.
 11 Q. Okay. Now, what did you do when you came back from this
 12 meeting in Europe?
 13 A. I was the member of our family that was the most
 14 concerned about what we heard in Norway, and shortly after I
 15 got back, I learned that the United Egg Producers was
 16 considering putting together a group of producers to join a
 17 producer committee to look at this issue in conjunction with
 18 poultry scientists, academicians who could also join the
 19 committee. So UEP sought out people who were interested in
 20 joining the committee.
 21 Q. And did you become a member of that committee?
 22 A. I did.
 23 Q. And is it correct that there was at this time a
 24 scientific committee as well as a producers committee?
 25 A. Yeah. There were -- I think UEP had sought out

1 Q. Okay. Can you identify what this document is?
 2 A. Yeah. It's a Board of Directors meeting in Dallas,
 3 February the 24th of 2000. This is very typical of the
 4 published documents that would come out, the minutes following
 5 these Board meetings.
 6 Q. And do you see that on the first page of the minutes
 7 there's a list of the members who were in attendance at the
 8 meeting?
 9 A. Yes.
 10 Q. And what is the name that is at the bottom of the first
 11 column of the document? Of those members?
 12 A. My name.
 13 Q. Okay.
 14 MR. NEUWIRTH: Your Honor, we would move for the
 15 admission into evidence of Plaintiffs' Exhibit 43.
 16 MR. KING: No objection, Your Honor.
 17 THE COURT: 43 is admitted.
 18 MR. NEUWIRTH: And if it would please the Court, if
 19 we could put that up for the jury.
 20 THE COURT: That's fine.
 21 MR. NEUWIRTH: Thank you.
 22 BY MR. NEUWIRTH:
 23 Q. And what I'd like to direct your attention to,
 24 Mr. Sparboe, is the second page of the document where towards
 25 the bottom of the page, there is a heading Animal Welfare.

1 Do you see that?

2 A. Correct.

3 Q. And do you see that it says: Dr. Jeffrey Armstrong,

4 chairman of UEP's Scientific Advisory Committee on animal

5 welfare presented recommendations from the committee?

6 Do you see that?

7 A. I do. Correct.

8 Q. And do you recall Dr. Armstrong doing that?

9 A. I do.

10 Q. And do you see that it says: The report focused upon

11 scientific recommendations for transportation and handling,

12 space allowance, beak trimming and molting?

13 A. Correct.

14 Q. And what is beak trimming?

15 A. Beak trimming -- very, very early in the life of a hen,

16 the very front edge of the beak is taken off so that instead

17 of it being in a hook-like shape, it's flattened out so that

18 the hen doesn't spill as much feed when she's in the feed

19 trough, and there's also less chance of the chicken pecking

20 other chickens. That's probably the main reason is less

21 mortality. So at Day 1 or 2 or the front end -- and it's the

22 front end of the beak is taken off.

23 Q. It then says: A summary of the scientific research will

24 now be presented to a producer committee.

25 Do you see that?

1 A. Yes.

2 Q. And is that the producer committee that you were a member

3 of?

4 A. Correct.

5 Q. And so is it correct -- are these minutes correct that

6 following this meeting, the recommendations of the Scientific

7 Advisory Committee, a summary of them, was presented to your

8 producer committee?

9 A. Correct.

10 Q. Okay. How frequently did the United Egg Producers,

11 producers committee on animal welfare meet?

12 A. Early on we met quite frequently. I'm guessing every six

13 to eight weeks, perhaps, maybe a little bit longer. It was

14 very science based. Three of the scientists joined our

15 committee. And so every -- every issue that's listed, beak

16 trimming, molting, handling manure, all of those issues were

17 discussed in our committee, but the producers wanted to, you

18 know, have an opportunity to speak to the reliability of, you

19 know, merging what the scientists suggested were necessary

20 reforms with what we could do as an industry and how quickly

21 we could do them.

22 Q. And so is it fair to say that at this time, after this --

23 after this Board meeting where it's stated that a summary of

24 the determinations of the Scientific Committee would be

25 presented to your producers committee, that these scientific

1 recommendations were discussed and considered in the producers

2 committee?

3 A. Correct.

4 Q. Now, do you recall that a few months later in May

5 of 2000, you attended -- I'm sorry. Let me rephrase that.

6 Do you recall attending, in May 2000, a meeting of

7 this United Egg Producers, Producers Animal Welfare Committee

8 in Washington, D.C.?

9 A. I do.

10 Q. Okay. And do you recall whether materials were handed

11 out to the members of the producers committee who participated

12 in that meeting?

13 A. Yeah. Correct.

14 Q. Okay. Let me hand you a document that's been marked for

15 identification as Plaintiffs' Exhibit 45. And the question I

16 have for you is whether you recognize this document?

17 A. Yes.

18 Q. And what is this document?

19 A. It's an analysis of two very common cages in the

20 industry, a 16 by 60 cage and a 24 by 20 cage, and the impact

21 of the cost of producing eggs at various densities. So

22 from -- going from 45 square inches up to, perhaps, 64 square

23 inches, what would be the cost to produce eggs and grow a bird

24 and so on.

25 Q. And does the -- do you recall whether this was something

1 that was handed out at the Animal Welfare Committee meeting in

2 Washington, D.C. that you attended?

3 A. I'm -- I'm positive that this was in the packet. I've

4 seen it before.

5 MR. NEUWIRTH: Your Honor, we would move for

6 admission into evidence of Plaintiffs' Exhibit 45.

7 THE COURT: Any objections from anybody?

8 MR. BIZAR: No objection, Your Honor.

9 THE COURT: It's admitted. You may publish it.

10 MR. NEUWIRTH: Thank you.

11 If we could put that up on the screen, please.

12 BY MR. NEUWIRTH:

13 Q. So you see there is the heading, UEP Animal Welfare

14 Committee meeting, May 15th, 2000. And I'd like to direct

15 your attention to Item Number 3 on the first page.

16 Do you see that it says: Increasing space

17 allowances for the industry can only be justified by

18 individual egg producers if most or all producers

19 participated?

20 Do you see that?

21 A. I do.

22 Q. Do you recall any discussion of that at the meeting you

23 attended?

24 A. The -- the document that we're looking at was presented

25 specifically within the committee, as I recall. This is now

1 15 years ago. We spent the majority of the time dealing with
 2 the science around these better husbandry issues. These
 3 documents were in the packet. It's 15 years ago. I don't
 4 remember specifically, you know, there being a great deal of
 5 time. I think there was an understanding that you couldn't go
 6 off and do this on your own and make it work. Everybody in
 7 the industry had to, you know, participate.

8 Q. And was that your understanding?

9 A. Yes.

10 Q. And why did you have that understanding that everyone in
 11 the industry had to participate to make this work?

12 A. Because the cumulative effect of having all producers
 13 giving more space to each hen would be a resulting drop in the
 14 number of birds in each henhouse, which would then increase
 15 the price.

16 Q. Okay. Now, do you see Item Number 5, it says:
 17 Increasing space allowances would have two major effects?

18 Do you see that?

19 A. Correct.

20 Q. And it says: A, a positioning of the industry as a
 21 pro-welfare step. This could avoid space allowances being
 22 levelled by the Government or a third party.

23 What do you understand that to mean?

24 A. I think all the membership of that committee recognized
 25 that this was a rising issue, animal welfare was an issue that

1 was going to face the industry, and I believe the membership
 2 were interested in better practices and putting together a
 3 program through the industry that would be perceived as
 4 addressing all of these molting and beak trimming and all of
 5 the issues dealing with the hen, better -- better animal
 6 husbandry.

7 Q. Is that something that you personally, as a member of the
 8 committee, were hoping to achieve?

9 A. Absolutely.

10 Q. Okay. Now, item B there says: An increase in space
 11 allowance would inevitably reduce the layer population and
 12 thereby reduce the surplus production problems affecting the
 13 industry over the past 20 years.

14 Do you see that?

15 A. I do.

16 Q. And what do you understand that to mean?

17 A. As I've stated earlier, the reducing -- what this is
 18 suggesting is that whether you have one cage or another, that
 19 you pull some birds out of each cage, it might be one or it
 20 might be two, depending on the cage size you had, in order to
 21 increase the overall space you give to each hen. The
 22 resulting impact is a reduction in the number of hens in each
 23 barn and an increase in price.

24 Q. Okay. And if you can look at the second page, do you see
 25 that there is a section C which says comments? Do you see

1 that?

2 A. Yes.

3 Q. And do you see that it says: Uniform application of
 4 minimum space requirements within the US would, one, place all
 5 producers on a level playing field; two, it would be well
 6 received by the public as a pro-welfare action; three, it
 7 would reduce the overproduction problem that has plagued the
 8 egg industry every three to five years?

9 Do you see that?

10 A. Correct. Yes.

11 Q. Do you have an understanding of what was meant there by
 12 "place all producers on a level playing field"?

13 A. I believe the committee felt that everybody should be
 14 producing at the same space densities under the Animal Welfare
 15 Program, and that resulting action of doing so would be
 16 perceived well by the public at large.

17 Q. Okay. And is that what Item Number 2 means, it would be
 18 well received by the public as a pro-welfare action?

19 A. Right. At this time, our company had very, very little
 20 call for Animal Welfare Program. But I think the industry was
 21 attempting, and I think -- we were attempting to create a
 22 program that we could take out into the marketplace that would
 23 deal with issues that the protesters and various people were
 24 unhappy with in the industry.

25 Q. And when you talk about protesters, what were you

1 referring to?

2 A. The -- I think at this time there was people protesting
 3 McDonald's, and our company never had protesters at this time,
 4 but we were hearing through the UEP that there were aggressive
 5 people in the Animal Welfare Community that were going to come
 6 after the UEP. So the members were in one regard not feeling
 7 animal welfare at that time, but we were being told that UEP
 8 was getting a lot of communications and phone calls and
 9 letters, and so we, as a group, felt we were doing the right
 10 thing in putting this program together.

11 Q. And did you feel that way at that time?

12 A. I did. I did.

13 Q. Okay. And Item Number 3 says: It would reduce the
 14 overproduction problem that has plagued the egg industry every
 15 three to five years.

16 Do you see that?

17 A. Yes, I do.

18 Q. And what did you understand that to mean?

19 A. The egg industry has had a history of boom-and-bust
 20 cycles, entirely based upon supply. Sometimes there would be
 21 a disease outbreak or something that would cut production.
 22 Demand would be relatively flat over the years, but when
 23 supply got out of whack, either too high or too low, the price
 24 would dramatically change. And so the boom-and bust cycle
 25 he's talking about was essentially to deal with the last three

1 or four years that had been very poor prices.
 2 Q. Okay. So now we're -- we've just talked about this
 3 meeting in May of 2000. So I'd like you to stay focused on
 4 the year 2000.
 5 A. Yes.
 6 Q. At this time in 2000, were you familiar with the company
 7 Rose Acre?
 8 A. I was.
 9 Q. And what did you know about Rose Acre at this time?
 10 A. Very, very large, long-term company in the industry,
 11 great competitor of ours, actually located in our state of
 12 Iowa with many of their birds. We competed against them.
 13 That's about it, I guess.
 14 Q. Now, when you were first involved in this producers
 15 committee on animal welfare in this period 1999, 2000, was
 16 Rose Acre a member of the United Egg Producers?
 17 A. Not at the beginning.
 18 Q. Did a point come when you personally asked Rose Acre to
 19 become a member of the United Egg Producers?
 20 A. I did. We were in the process of dealing with these
 21 various issues, and I believe, although I can't be 100 percent
 22 sure of it, Gene Gregory of UEP felt that somebody on the
 23 committee should make an appeal to Rose Acre to join the
 24 process. And because of their size and their influence in the
 25 industry, we felt that it was important that they get on that

1 take advantage of the break, and we will be back as soon as
 2 everybody is ready. Thanks very much.
 3 MR. NEUWIRTH: Thank you, Your Honor.
 4 THE DEPUTY CLERK: All rise.
 5 (Jury out.)
 6 THE COURT: I believe, Mr. Sparboe, you can also
 7 enjoy the break.
 8 THE WITNESS: Thank you.
 9 (After recess.)
 10 THE DEPUTY CLERK: All rise.
 11 (Jury in.)
 12 THE COURT: All right, you all may take your seats.
 13 Mr. Neuwirth, you may proceed.
 14 MR. NEUWIRTH: Thank you very much, Your Honor.
 15 BY MR. NEUWIRTH:
 16 Q. Dr. Sparboe, right before the break, you mentioned that
 17 you had sent a letter to Marcus Rust of Rose Acre during the
 18 year 2000 inviting Rose Acre to become involved with the
 19 United Egg Producers, and right before the break, I handed you
 20 a document. And is this the letter -- can I ask you what this
 21 document is?
 22 A. Yeah. It's -- it's basically telling Mr. Rust about the
 23 committee, the animal welfare process we were involved with,
 24 and I believe at the time, they were not, at Rose Acres, a
 25 member, and we encouraged them to become a member.

1 committee.
 2 Q. And what was Gene Gregory's position?
 3 A. He -- well, I think Al Pope was the head of the whole --
 4 CEO of the organization. Gene was more day-to-day the
 5 operational guy.
 6 Q. And did you agree with Mr. Gregory that it made sense to
 7 encourage Rose Acre to become part of the process at that
 8 time?
 9 A. I did.
 10 Q. Did you know Marcus Rust at this time?
 11 A. I knew him and had met him, but I hadn't -- we weren't
 12 great friends or we hadn't spent a lot of time together. I
 13 knew him.
 14 Q. And how did you go about undertaking to ask Rose Acre to
 15 become involved in the United Egg Producers at this time in
 16 the year 2000?
 17 A. I sent Marcus a letter encouraging him to join the
 18 Scientific Committee.
 19 Q. Let me hand you a document that's been previously marked
 20 as Defendants' Exhibit 142.
 21 THE COURT: Before we move to D-142, I would like
 22 to -- I'll give the jury about a five, seven-minute break.
 23 MR. NEUWIRTH: Certainly. Certainly.
 24 THE COURT: If that's all right. All right.
 25 Obviously, it's important that you not discuss the case. Just

1 Q. Okay.
 2 MR. NEUWIRTH: We would move for the admission of
 3 what was marked as Defendants' Exhibit 142, Your Honor.
 4 THE COURT: Any objection?
 5 MR. KING: No objection. No objection.
 6 THE COURT: Admitted, and may be published.
 7 MR. NEUWIRTH: Thank you.
 8 If we could put that up, please.
 9 BY MR. NEUWIRTH:
 10 Q. And do you see in the first line of this letter dated
 11 September 28, 2000, that you say, Dear, Marcus. Please find
 12 enclosed some -- I guess it's some of the information
 13 concerning the McDonald's UEP animal welfare issue.
 14 Do you see that?
 15 A. Yes.
 16 Q. Why do you describe it there as the McDonald's UEP animal
 17 welfare issue?
 18 A. At the time, McDonald's was the largest single customer
 19 of eggs in the United States, and, of course, they had stores,
 20 McDonald's stores, all over Europe, and it was my
 21 understanding that they were being protested in Europe, and
 22 that the CEO of that organization and the Board of Directors
 23 had come to United Egg Producers to initiate an Animal Welfare
 24 Program. They felt, I believe, that the problem of animal
 25 welfare protesters would be rising in the United States, and I

1 think they wanted to get ahead of it.

2 Q. And did you feel that at this time, as of September 2000,

3 when you wrote this letter to Mr. Rust, did you personally

4 feel that your involvement in this Producers Animal Welfare

5 Committee was a way to address those issues?

6 A. I did.

7 Q. And in the second paragraph you say, UEP initiatives

8 underway in the animal welfare and food safety warrant the

9 involvement of every producer in my opinion.

10 Do you see that?

11 And is it correct that as of this time,

12 September 2000, that reflected your personal view?

13 A. It did.

14 Q. Did you ever receive any response to this letter from

15 Mr. Rust?

16 A. I don't recall how quickly he responded to the letter

17 or -- and I was unaware of other producers, what they were

18 doing, as far as Marcus was concerned; however, he did

19 eventually join United Egg Producers and also he joined our

20 committee.

21 Q. Okay. Now, you told Mr. Rust in this letter, as we just

22 saw, that the initiatives underway in the animal welfare and

23 food safety warranted the involvement of every producer. And

24 you testified that at the time you wrote that letter, that was

25 how you felt.

1 Q. Well, why did -- why would that have caused you -- did

2 your feeling about the process change when that was happening?

3 A. It did. Because coincidental to the UEP suggesting a

4 seal be put on the carton and that every producer audit --

5 that every producer be audited, the next request was that each

6 member be forced to comply 100 percent with all of their

7 flocks in this program.

8 The problem with that for many people in the egg

9 industry is, we sat on both sides of the egg industry.

10 Two-thirds of all eggs in the United States go into cartons or

11 go to hotels and are eaten by the consumer. One-third of the

12 eggs are broken and go into cake mixes and go into products

13 that are for candy and all kinds of other products.

14 That side of the industry had no demand for animal

15 welfare produced eggs. And so in addition, our company had

16 arrangements with family farmers in Minnesota and Iowa where

17 we would own the chicken and we would provide the feed and the

18 marketing, and they would own the henhouse and provide the

19 labor. And so they were contract producers of ours.

20 They would go out and get long-term bank loans to

21 put up a very expensive henhouse, perhaps 2 or \$3 million

22 commitment, and now we had our trade association saying, we

23 had to be 100 percent compliant with the density, the space

24 that we were going to give each hen.

25 Well, over a period of four or five years, this

1 As time went on and you continued your participation

2 in this Producers Animal Welfare Committee, did you continue

3 to have that feeling about the work that was being done?

4 A. I felt very positive about the committee. I thought it

5 was very legitimate. I thought we were dealing with the

6 issues affecting the poultry, the chicken. And through the

7 first two-thirds to three-quarters of this process, that's all

8 we dealt with. There was significant input by the scientists,

9 poultry scientists, three very well-known poultry scientists

10 sat on the committee, and we were in the nuts and bolts of

11 dealing with how to make it better for the hen.

12 So, yes, I was -- I was supportive of what we were

13 doing.

14 Q. And you said that that was true for the first two-thirds

15 of the --

16 A. Maybe three-quarters, yeah.

17 Q. Then what happened?

18 A. Well into the process, UEP began talking about creating a

19 seal to put on the carton of every producer, and the UEP seal

20 would be -- each producer to get the seal for the animal

21 welfare seal would be audited, and the audits would come to

22 each producer to make sure that they were all following the

23 scientific recommendations on raising the hens properly,

24 molting, and so on. So it was -- I mean, that was basically

25 my feeling.

1 simply wasn't feasible for people that were producing eggs for

2 us because it removed birds from each cage, and, therefore,

3 the farmer producer was being paid fewer and fewer dozens. So

4 the contracts were jeopardized by the actions of UEP.

5 There were also -- there was no demand, as far as I

6 knew, on the breaking side of the industry for this program.

7 So we asked our own trade association to allow the breaking

8 side of the industry or the flocks that we had that were

9 dedicated to the breaking side of the industry be left out of

10 the program because we had economic contracts, economic

11 arrangements with our producers that committed to a certain

12 number of dozens for each month, and now we were going to be

13 taking hens out of the cages and the contracts were

14 jeopardized.

15 Q. So when you talk about this 100 percent requirement, are

16 you referring to what was sometimes called the 100% rule?

17 A. Correct.

18 Q. Okay. And how did this discussion of the 100% rule first

19 come up on this producers committee?

20 A. I guess it's been 15 or 17 -- I don't remember who was

21 the first person that brought it to the committee, but I

22 showed up for a meeting one day and all of a sudden we were

23 talking about a seal and 100 percent compliance. Nobody was

24 going to be allowed to produce at anything other than the

25 space densities that UEP mandated in that program. And over a

1 period of time, this was going to be a very significant
 2 reduction in birds per house.
 3 Q. Now, you made reference to the fact that you didn't see
 4 customer demand for this type of 100% rule. Can you explain a
 5 little more what you mean about that?
 6 A. Well, I felt that if there was going to be a need to
 7 provide these new changes in how we produced eggs, that it
 8 would first come on the consumer side of the equation in the
 9 grocery industry and in the food service industry. But on the
 10 breaking side of the industry, our customers hadn't asked for
 11 it. I don't know that we had even one customer mandating or
 12 requesting that we produce eggs in that program. So -- but --
 13 Q. Now --
 14 A. Go ahead.
 15 Q. I'm sorry. Were you finished?
 16 A. No, I'm fine.
 17 Q. Now, you referred to the breaking side of your business.
 18 A. Right.
 19 Q. If we can focus now on the side of your business that
 20 created shell eggs --
 21 A. Right.
 22 Q. -- that would be sold as shell eggs. I take it, since
 23 you mentioned McDonald's, that Sparboe had customers that were
 24 interested in purchasing shell eggs that were part of some
 25 sort of Certified Program; is that correct?

1 A. Actually, now we're talking 2001, '2, '3. There were, in
 2 the midwest, very few, but there were some customers that were
 3 bringing up the issues. So it had now become more top of the
 4 mind. It was being discussed.
 5 Q. And to the extent that there were any customers of
 6 Sparboe that did indicate an interest in purchasing eggs that
 7 were part of some sort of Animal Welfare Program, did any of
 8 those customers tell you that they felt the need to only buy
 9 these types of eggs from a company where 100 percent of the
 10 facilities were making those types of eggs?
 11 A. No. We were willing to produce eggs and keep them in
 12 dedicated facilities for the customers that wanted animal
 13 welfare eggs.
 14 Q. And did Sparboe have any customers say, we will only buy
 15 eggs from you if 100 percent of your facilities are making
 16 eggs subject to these animal welfare conditions?
 17 A. No.
 18 Q. Now, in your experience, was it -- is it the case that if
 19 you have fewer hens or you give hens more space when they're
 20 laying eggs that they will become more productive, that they
 21 will produce more eggs?
 22 A. Slightly more eggs. There were studies cited in our
 23 committees suggesting that the hen would incrementally
 24 increase the number of eggs that she would lay, but it was a
 25 relatively insignificant increase.

1 Q. Now, what was your understanding of what would happen to
 2 hen supply -- let me say this again.
 3 At the time when you were on this committee, did you
 4 have an understanding of what was going to happen to hen
 5 supply in the United States to the number of hens laying eggs
 6 in the United States if this program with the 100% rule was
 7 put into effect?
 8 A. I did. So around this time, there were approximately,
 9 and give or take, 280 million layers in the United States.
 10 Very close to the number of people in the United States. And
 11 very, very minor changes in the supply chain had huge impacts
 12 on the price of eggs. And when this program started, most
 13 producers in the egg industry were at 48 to 53 square inches.
 14 When the egg industry -- when the UEP Scientific
 15 Committee Program was initiated, the first step was to go to
 16 56 square inches in early 2002. That change, a 3 percent
 17 change, amounted to about a 6 percent change in the national
 18 flock.
 19 In other words, we would be pulling hens out of
 20 cages and the net effect would be that there would be a
 21 reduction in the national flock on paper to the tune of about
 22 18 million layers.
 23 Now, people were building new buildings, but the
 24 first step was a very dramatic drop in supply. It was
 25 almost -- I was concerned that it would be too big -- too

1 short-term.
 2 Q. Now, did you have an understanding that the increased
 3 productivity that you referenced that the hens would have from
 4 having additional space would offset this large reduction in
 5 the hen supply of about 6 percent that you just described?
 6 A. Absolutely not.
 7 Q. And why do you say absolutely not?
 8 A. Because, as I recall, the number of eggs before and after
 9 were a very minor increase, but we were talking about a
 10 6 percent reduction in the total number of layers, almost
 11 6 percent in one fell swoop beginning, I think, in April
 12 of 2002. It was a very dramatic reduction in the number of
 13 birds in that first step.
 14 Q. And can you say again what was the cage space that just
 15 the first step of the program was going to require?
 16 A. 56.
 17 Q. Okay.
 18 MR. NEUWIRTH: So could I ask you to put up again
 19 Plaintiffs' Exhibit 18, which has already been admitted into
 20 evidence, which is the August 2nd, 1999 United Voices report
 21 that we looked at earlier.
 22 BY MR. NEUWIRTH:
 23 Q. And if we could turn to page 3, you'll see -- you'll
 24 recall that we discussed what had been
 25 Mr. Bell's recommendations at the time. He says -- at the end

1 of that last paragraph with the star, he says: If 48 square
2 inches were adopted as the minimum space allowance, millions
3 of extra birds would be eliminated.

4 Do you see that?

5 A. Correct.

6 Q. And is it correct that this 56-square-inch cage that was
7 just a first step of this new program was going to give even
8 more space than Mr. Bell had recommended as the solution to
9 the long-term supply program?

10 A. Right. I didn't know what other producers were at
11 because we weren't in their houses, but this was a
12 significant -- significantly larger impact than even Don
13 alludes to in here. We just -- we felt that going to
14 56 square inches in the first step would have a dramatic
15 impact.

16 Q. Now, I think you -- you've already spoken about your
17 perception of customer demand, but let me just ask you
18 generally, even beyond Sparboe's own customers, as a
19 participant in this process, did you have the perception that
20 this animal Certified Program was the result of customer
21 demand in the marketplace for this type of program?

22 A. Well, I -- yes, in the case of McDonald's, they were
23 requesting a program that they could carry to their stores and
24 to put up to the activists and to -- to maybe provide a better
25 image for McDonald's. As to our customers in the Midwest, no,

1 we had none at that time that were asking for this.

2 Q. Now, are you familiar with an entity called FMI or the
3 Food Marketing Institute?

4 A. I am.

5 Q. And was it your understanding at this time that the type
6 of program that the UEP adopted with this 100% rule was really
7 the result of what the FMI told UEP it wanted?

8 A. No. No.

9 Q. And why do you say no?

10 A. I became aware of a meeting to be taking place in
11 Washington, D.C. between FMI, which is the trade association
12 for all the large grocery store chains, and United Egg
13 Producers, and I was not initially invited to attend that
14 meeting because by then, our company had taken a fairly vocal
15 position in the committee that we were not in favor of a
16 mandate of 100% rule, and I wanted to attend the meeting in
17 Washington to explain to FMI that this program would have a
18 disproportionate impact on some producers who were on the
19 breaking side of the industry, and I also wanted to present to
20 them that we were willing to comply 100 percent with the
21 program on eggs going into the carton and to the food service
22 industry, that we could segment and produce the way the
23 grocery industry wanted, but that on our breaker side of our
24 industry, where we shipped tankers of liquid and dry product,
25 that there was no demand and that we had long-term contracts

1 and with farmer families that were counting on a certain
2 number of dozens.

3 Their kids were collecting eggs in these henhouses,
4 and they were expecting a certain number of dozen in order to
5 pay the bank loan. And now UEP came along and changed the
6 game. And now we were being forced to pull hens out of all of
7 our birds in every single flock. So it concerned our family,
8 and I went to my father and I said, We need to go to FMI and
9 we need to make sure they understand that there's two sides to
10 the story.

11 Q. Now, do you have a recollection of roughly when this
12 meeting was, this event, this Food Marketing Institute meeting
13 that you attended?

14 A. It was, I believe, in February or perhaps early winter.
15 I don't remember the exact date, but --

16 Q. Does around 2002 sound right?

17 A. Yeah. Yeah. It was at the tail end of our
18 committee's work, and the seal and the 100% rule had become
19 the issue now. I mean, everybody had agreed on everything
20 else.

21 Q. Now, how did you feel about the fact that the United Egg
22 Producers was talking to the Food Marketing Institute about
23 this new program?

24 A. I wasn't happy.

25 Q. And why weren't you happy?

1 A. Well, I felt that the Food Marketing Institute as a trade
2 association of the grocery industry should not be telling --
3 and UEP to FMI should not be dealing with our customers. Our
4 customers are our customers. We worked hard for them. And we
5 did not want to see a trade association in Washington, D.C.
6 mandate a seal to be put on cartons for all producers and
7 mandate 100 percent compliance, because it impacted the
8 financial well-being of family farmers, contract farmers, that
9 work for us. We were not in favor of it being 100% rule.

10 Q. So your customers were the members of the Food Marketing
11 Institute?

12 A. Yes.

13 Q. The large grocery chains?

14 A. Right.

15 Q. And you were not happy that your trade organization,
16 United Egg Producers, was raising this issue with your
17 customers?

18 A. They were trying to get FMI to say to its members, You
19 must put the seal on every carton in your store, which then
20 would mean 100 percent compliance.

21 Q. Okay. And when you say they were trying to get FMI
22 members to do this, who is the "they" you're talking about?

23 A. The UEP. The UEP leadership and some members of our
24 committee.

25 Q. And did the leadership include egg producers?

1 A. Yes.

2 Q. And who were some of those leaders?

3 A. Well, the Cal-Maine organization was -- was very

4 supportive of the seal. The Rose Acres organization was very

5 supportive of the seal and other producers. There were

6 members, as Michael Foods, one of the largest producers who

7 were significantly on the breaker side of the business, that

8 was not in favor of that 100% rule.

9 Q. Now, you say that you got yourself invited to this

10 meeting between the United Egg Producers and the Food

11 Marketing Institute in early 2002.

12 Did you end up going to that meeting?

13 A. I did. I didn't get invited. I just went and showed up.

14 I knew when it would be and I was very respectful. I -- I

15 showed up, I listened to the presentation. Then when we had

16 an opportunity to dialogue back and forth with FMI, I

17 explained that there wasn't -- there wasn't uniform agreement

18 within the industry to the 100% rule.

19 Q. Okay. Now, when you -- did a point come where -- you

20 said that you had already by this point expressed some concern

21 about 100% rule. At this time in early 2002, apart from going

22 to this meeting with the Food Marketing Institute, did you do

23 anything else to let it be known that you were not happy with

24 the program as it was developing?

25 A. There was a group of about 50 million birds worth of

1 producers that were essentially reaching out to the rest of

2 the industry and saying we can't live with this 100% rule,

3 because it will absolutely wreak havoc on parts of our

4 business. So we made an appeal in committee, at Board

5 meetings. We reached out to all the other members and said

6 that we needed relief from this 100% rule.

7 Q. Now, around the time that you were doing this, and I'll

8 get to the -- some questions about the details of that

9 immediately, but just quickly before that, at the time when

10 you were starting with these other producers to have these

11 discussions and take the actions you described, do you recall

12 that the United Egg Producers were doing anything to try to

13 encourage members to join the new program?

14 A. Yeah. I mean, I think everybody in the -- that were

15 members were being encouraged to comply, you know,

16 100 percent. But we made amendments and motions at the Board

17 meeting to essentially put this up for a vote. We asked for

18 relief for that side of the industry that had contracts and

19 that were producing liquid and powder products.

20 Q. Do you recall that a point came during that year when the

21 United Egg Producers sent communications to members

22 encouraging them to participate in this new Animal Welfare

23 Program?

24 A. Yeah, it was -- generally, yes, I am -- I am familiar

25 with those outreach.

1 Q. If I could hand you what's been marked for identification

2 as Plaintiffs' Exhibit 81, and my first question will be

3 whether you recognize this document.

4 A. Yes.

5 Q. Can you tell me what this is?

6 A. This is an appeal by Gene Gregory to essentially agree to

7 the program as had been voted on in the committee and

8 published.

9 Q. And if you could look at the first page of the document.

10 Do you recognize what this is?

11 A. Yeah. It's a recap of the efforts made by UEP to reach

12 out to both the Food Marketing Institute, which represents the

13 grocery stores in the United States, and the National Council

14 of Chain Restaurants, which represents all the restaurants to

15 make a public announcement, a press release that this program

16 would be -- was being unfolded.

17 Q. I apologize. I wasn't clear. I'm talking about the very

18 first page, the back.

19 A. Oh, the very first page.

20 Q. Do you recognize what this is?

21 A. Yes.

22 Q. And what is it?

23 A. It's from Gene Gregory, the head of UEP, to the

24 committee, basically asking every single member of the

25 committee to implement 100 percent of the program.

1 Q. And when you say "the committee," is this the producers

2 committee for animal welfare?

3 A. Yes, correct.

4 Q. And you were a member of that committee who received this

5 e-mail?

6 A. Yes, yes.

7 Q. And do you recall receiving this e-mail?

8 A. Yes. Yes.

9 MR. NEUWIRTH: Your Honor, we would move for the

10 admission into evidence of Plaintiffs' Exhibit 81.

11 MR. KING: I object based on relevance. Relevance

12 and hearsay.

13 THE COURT: Well, are you urging for a limitation

14 instruction?

15 MR. KING: Yes, Your Honor, a limiting instruction

16 that he can offer this for a nonhearsay purpose, but he can't

17 offer it for the truth of the matter asserted.

18 MR. NEUWIRTH: Yes, that would be my intention.

19 THE COURT: Agreed.

20 MR. NEUWIRTH: Yes.

21 THE COURT: Okay. Ladies and gentlemen, you may

22 recall that I said every so often I may be telling you that

23 some evidence can be used for a limited purpose and not for

24 others. There is frequently -- there are objections that are

25 made on the basis of what we call hearsay. And that means

1 that sometimes some pieces of evidence just because -- they
 2 lay sort of a context or there may be a limited purpose. This
 3 particular document is being offered not because anybody is
 4 admitting or because it's being admitted as truthfully
 5 imparting information that is accurate, but really for some
 6 other limited purpose and then counsel will be using it that
 7 way. So that when you see this document, recognize that it's
 8 not being admitted because the Court has ruled that everything
 9 in it is accurate. But counsel is going to be using it
 10 perhaps for a different reason.

11 Right?

12 MR. NEUWIRTH: Yes, Your Honor.

13 THE COURT: Fair enough, everybody?

14 MR. KING: Fair enough, Your Honor.

15 THE COURT: Okay. On that basis, P 81 is admitted
 16 for a limited purpose.

17 MR. NEUWIRTH: And with that limited purpose, may we
 18 show it to the jury, Your Honor?

19 THE COURT: You may.

20 MR. NEUWIRTH: Thank you.

21 BY MR. NEUWIRTH:

22 Q. And really the very specific purpose that I'm asking
 23 about this document, Mr. Sparboe, is just to ask whether --
 24 and I think you've said this, but just so that the jury can
 25 see the document, you recall receiving an e-mail from

1 Gene Gregory from the UEP on March 20th, 2002, that was sent
 2 to you and the other members of this Animal Welfare Committee
 3 for producers saying, you should implement guidelines,
 4 correct?

5 A. Correct.

6 Q. And is it correct that what is attached to it is an
 7 editorial by Mr. Gregory, which begins on page 2 with the
 8 title You Should Implement Guidelines?

9 A. Correct.

10 Q. And do you see on the third page of the document, the
 11 second page of this editorial, there's the second full
 12 paragraph on the page says: If all the industry were to
 13 follow the guidelines through the first step, this would
 14 result in a flock size reduction of 13 million hens.

15 Do you see that?

16 A. I do.

17 Q. Now, to be clear, putting aside whether this estimate is
 18 true or not, what is your understanding of what is the first
 19 step that is being referred to here?

20 A. The first step was designed for every producer to go to
 21 56 square inches from wherever they were. Some were at 48.
 22 Most of our barns were at 53 square inches, which meant that
 23 the association was asking us to begin removing hens from some
 24 of the cages in order to reach that -- that density.

25 Q. Now, do you know whether -- and then you see it say right

1 after that: Place your own estimate on how much the egg
 2 market will rise if even half this reduction were to occur.

3 Do you see that?

4 A. Correct.

5 Q. Did you have an understanding when you received this of
 6 what it meant when it said "how much the egg market will
 7 rise"?

8 A. Oh, I sure did.

9 Q. And what was your understanding?

10 A. That it would rise significantly.

11 Q. What would rise?

12 A. The price of eggs.

13 Q. Now, do you know whether this editorial, which was sent
 14 to the members of your producers committee, on animal welfare
 15 was ever circulated more broadly to the members of the UEP?

16 A. I don't know that. I can't answer that today.

17 Q. Let me ask you, if I can refresh your recollection. I'm
 18 just going to hand you a document solely for the purpose of
 19 asking you whether it refreshes your recollection as to
 20 whether that editorial was ever distributed more broadly to
 21 the members of the United Egg Producers.

22 And what I would ask specifically that you look at
 23 in this document -- I'm sorry.

24 THE COURT: It's not this one.

25 MR. NEUWIRTH: I apologize. I gave you the wrong

1 document. Please forgive me.

2 And please forgive me, ladies and gentlemen of the
 3 jury, I -- I am not -- I'm very conscious of the value of your
 4 time.

5 Let me -- let me give you the correct one. I'm
 6 sorry.

7 BY MR. NEUWIRTH:

8 Q. And in this document, I would ask if you just look at the
 9 second and third page, and just let me know whether seeing
 10 this refreshes your recollection.

11 A. Yes. Yes. This came out in the monthly newsletter.

12 Q. Okay. Having -- is it your recollection -- with the
 13 opportunity to see this, do you have a personal recollection
 14 that this -- having now seen this document --

15 A. Yeah.

16 Q. -- that this was shared with members of the UEP?

17 A. Yes.

18 Q. And is this one of the newsletters, the United Voices
 19 newsletters that would have been distributed monthly, as you
 20 described earlier?

21 A. Correct.

22 Q. And do you recall having seen this when you were at
 23 Sparboe?

24 A. Yes.

25 Q. And is it dated March 25, 2002?

1 A. Yes.

2 MR. NEUWIRTH: Your Honor, we would move for the

3 admission of Plaintiffs' Exhibit 82.

4 THE COURT: Well, I thought 82 was just being used

5 to refresh his recollection, which he said yes, so then that

6 would mean you don't need the exhibit.

7 I may be going back to evidence 101.

8 MR. NEUWIRTH: Well, I do use it to refresh his

9 recollection, but having refreshed it --

10 THE COURT: Is there any objection?

11 MR. KING: Objection based on hearsay with the same

12 limiting instruction.

13 THE COURT: Okay. We've had our little visit to the

14 evidence class.

15 MR. NEUWIRTH: Yes. And I --

16 THE COURT: Not a problem. Not a problem.

17 Then 82 will be admitted. And, again -- once again,

18 for this limited purpose of simply saying something was

19 circulated. Not -- not being advanced for the truth of the

20 contents of it.

21 MR. NEUWIRTH: Correct, Your Honor.

22 THE COURT: Okay, go ahead.

23 MR. NEUWIRTH: Thank you.

24 And so if we can just put up quickly Plaintiffs' 82.

25 BY MR. NEUWIRTH:

1 Q. This is the March 25, 2002 United Voices, correct?

2 A. Right.

3 Q. And if we look at the second page, we see that that same

4 editorial that was circulated to the members of your producers

5 committee was then shared with the members of the UEP, the

6 United Egg Producers, through this newsletter; is that

7 correct?

8 A. Yes.

9 Q. Okay. Thank you.

10 Now, do you recall that in late 2002, you attended a

11 meeting of the United Egg Producers Board of Directors?

12 A. I did.

13 Q. And is it correct that at this point in 2002, Sparboe,

14 your company, had a seat on the UEP Board of Directors?

15 A. Correct.

16 Q. And is it correct that you would periodically be one of

17 the people from Sparboe who would attend these meetings?

18 A. I would attend the meeting, but through most of this

19 period of time, my father was on the Board.

20 Q. Okay. And do you recall that at this meeting in

21 October 2002, there was a vote related to the new Animal

22 Welfare Program?

23 A. Yes.

24 Q. Let me hand you what's been marked for identification as

25 Plaintiffs' Exhibit 90. And do you recognize this document?

1 A. Yes.

2 Q. And what is it?

3 A. It's the minutes of a meeting we had in Savannah,

4 Georgia. I attended the meeting. It's a recap of a number of

5 different committees that attended that Board meeting and what

6 the committees were working on.

7 Q. And this is dated October 10th and 11th, 2002, this

8 meeting?

9 A. Yep.

10 Q. And in your experience, were minutes of this type created

11 regularly for meetings of the United Egg Producers Board of

12 Directors?

13 A. Yes.

14 Q. And was it typical in the ordinary course for those who

15 attended the meeting to receive a copy of the minutes?

16 A. Yes.

17 MR. NEUWIRTH: Your Honor, we would move for the

18 admission of Plaintiffs' Exhibit 90.

19 MR. KING: No objection.

20 THE COURT: 90 will be admitted and may be

21 published.

22 MR. NEUWIRTH: Thank you.

23 BY MR. NEUWIRTH:

24 Q. And let me ask if we can turn, please, to the second page

25 of the document under the heading Animal Welfare.

1 Do you see that?

2 And this is now October 2002. So this would have

3 been the very first year of the program with the 100% rule,

4 correct?

5 A. Correct.

6 Q. And do you see that it says: In the absence of the

7 committee chairman, Gene Gregory presented the report -- the

8 report of the Animal Welfare Committee -- and in doing so

9 acknowledged the large attendance at the previous

10 day's meeting.

11 Do you see that?

12 A. Correct.

13 Q. Do you recall having been at that previous day's meeting?

14 A. I was.

15 Q. It then says: He, Mr. Gregory, announced that 163

16 companies representing 200 million layers had filed the

17 application for certification and were thereby implementing

18 the UEP Welfare Guidelines.

19 Do you see that?

20 A. Yes.

21 Q. And then he said, The committee had several motions.

22 Do you see that?

23 A. I do.

24 Q. And the first motion says: It was moved by TrueX and

25 seconded by Bahan to reconfirm the status that a company must

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1 commit to implementing the welfare guidelines on 100 percent
 2 of all production facilities regardless of how or where eggs
 3 may be marketed.
 4 Do you see that?
 5 A. I do.
 6 Q. And then it says: The 100 percent commitment is intended
 7 to be inclusive of all company entities, affiliates, et
 8 cetera.
 9 Do you see that?
 10 A. I do.
 11 Q. Is that describing what you understood to be the 100%
 12 rule?
 13 A. Correct.
 14 Q. Now, you mentioned earlier that after this 100% rule was
 15 adopted, that Sparboe and a group of other companies, I think
 16 you said they represented about 50 million layers; is that
 17 correct?
 18 A. Correct.
 19 Q. That they took some action to try to address the 100%
 20 rule; correct?
 21 A. Correct.
 22 Q. Did that group of companies get together and meet to talk
 23 about this?
 24 A. We did.
 25 Q. Do you recall where that meeting took place?

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1 A. I believe it was Minneapolis.
 2 Q. And what happened at that meeting?
 3 A. It was a shared concern over the impact that the 100%
 4 rule would have on companies who were producing on both sides
 5 of the bridge, so to speak.
 6 Q. And do you remember the names of any of the other
 7 companies besides Sparboe that were participating in that
 8 meeting?
 9 A. I believe Michael Foods was there. And it's been 16
 10 years ago, but they were mostly producers in the breaking side
 11 of the business. Almost exclusively people that were not
 12 going into cartons but were going into breaking -- breaking
 13 product.
 14 Q. And I think you mentioned that Sparboe was a company that
 15 did both shell eggs and breaker eggs?
 16 A. Yeah, about 2:1.
 17 Q. 2:1 shell?
 18 A. 2:1 shell.
 19 Q. Okay. Now, did that group create any written work
 20 product from the meeting?
 21 A. This was very, very close to a time when the producers
 22 were considering creating a very close product to the UEP
 23 Program with the exception of the 100% rule. So there were
 24 discussions about creating a mirror program that could provide
 25 all the animal husbandry but only on eggs that were from

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1 customers demanding the program.
 2 Q. So essentially something like the UEP Program but without
 3 the 100% rule?
 4 A. Correct.
 5 Q. Now, I think you mentioned earlier that a point came
 6 where your group actually went to the UEP, to the United Egg
 7 Producers, to ask that they reconsider the 100% rule.
 8 A. We did.
 9 Q. And did your group create any written document explaining
 10 your position about that?
 11 A. Well, there was -- I'm not sure exactly of the dates and
 12 the time, but we went to UEP leadership asking that we meet in
 13 a smaller group and that we could talk about the possibility
 14 of a compromise.
 15 Q. Okay. And did you make that request at a -- at a meeting
 16 of the United Egg Producers Board of Directors?
 17 A. I did.
 18 Q. Okay. Let me hand you what has been marked for
 19 identification as Plaintiffs' Exhibit 98.
 20 And, Mr. Sparboe, could you be kind enough to
 21 identify for the jury what it is that you're looking at?
 22 A. This is an annual Board of Directors meeting in Atlanta
 23 at the Atlanta poultry convention, one of the largest
 24 agricultural conventions in the world. We met during that
 25 convention as a board and as an industry, I think the second

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1 day of that week.
 2 Q. And this was a meeting of the United Egg Producers Board
 3 of Directors during that convention?
 4 A. Correct.
 5 Q. And do you see that there's a list of the attendees at
 6 the meeting --
 7 A. Correct.
 8 Q. -- on the first page?
 9 A. Yeah.
 10 Q. And are you listed as one of the attendees?
 11 A. Yes.
 12 Q. And do you recognize these as the minutes that were
 13 created from that meeting?
 14 A. I do.
 15 Q. And are these the type of minutes that were typically
 16 created at Board of Directors meetings that took place for the
 17 United Egg Producers?
 18 A. Correct.
 19 MR. NEUWIRTH: Your Honor, we would move for
 20 admission of Plaintiffs' Exhibit 98.
 21 MR. KING: No objection.
 22 THE COURT: 98 is admitted and may be published.
 23 BY MR. NEUWIRTH:
 24 Q. And if I could ask you, if --
 25 MR. NEUWIRTH: Can we put this up?

1 BY MR. NEUWIRTH:
2 Q. Okay. And these are the minutes and you're listed there
3 as one of the Board members attending; correct?
4 A. Yeah. I think at that Board meeting was my first Board
5 meeting. I believe I was voted on to the Board during that
6 meeting and my father left the Board.
7 Q. Okay. So now you were an official member.
8 A. Yes.
9 Q. And if you can turn to page 2, you can see that under the
10 Animal Welfare Committee report, there is a motion Number 3.
11 And do you see it says there: It was moved by Bahan and
12 seconded by Lofgren to appoint a compromise committee
13 consisting of three members from a group of producers
14 represented by Garth Sparboe and three members selected by
15 Bahan from the Animal Welfare Committee for the purpose of
16 trying to reach a compromise on the 100 percent facility
17 commitment and the commingle requirement. This committee
18 would be directed to meet and report back to the Animal
19 Welfare Committee within 30 days.
20 Do you see that?
21 A. I do.
22 Q. So what was going on here?
23 A. So even at this late date, the United Egg Producers and
24 the Board took the action of asking a small group of people to
25 meet and to try and hammer out a compromise, if there was a

1 compromise possible. And that meeting took place in Las Vegas
2 as a result of the appointment of these various individuals.
3 And I flew to Las Vegas and I met with these six or seven
4 individuals, pretty much for an entire day. We got there in
5 the morning, and we were going at it probably until
6 mid-afternoon.
7 Q. So the minutes talk about three members from the group
8 represented by Garth Sparboe. What group is that?
9 A. I believe Michael Foods was represented by a member of
10 their staff. There were three people that were supportive of
11 the 100% rule on the committee that came. Cal-Maine was
12 supportive. They were there, the largest producer in the
13 country. Ken Looper was that gentleman's name. He came. And
14 we met, you know, in a conference room for a good part of the
15 day trying to come up with a compromise.
16 Q. So this was a meeting between members of your group that
17 was trying to change the 100% rule and three members of the
18 UEP that supported the 100% rule?
19 A. Correct.
20 Q. And did you -- well, why don't you describe what happened
21 during that day of meetings in Las Vegas?
22 A. We -- the people that were supportive of the plan as it
23 existed and got voted in were primarily people on the carton
24 grocery side of the industry. The people that came with me
25 that were asking for relief on this program were people who

1 produced both for the grocery industry, but also were breaking
2 producers.
3 And we met and we were attempting to reach some kind
4 of -- we were willing to dedicate facilities to the Animal
5 Welfare Program, but this issue of commingling reared its head
6 throughout this process, and the refrain from the pro
7 100% rule people is, how can you guarantee that 100 percent of
8 your eggs are going to have them coming from this program, the
9 United Egg Producers program?
10 And we were willing to dedicate facilities to a
11 customer who would demand this program or in the grocery
12 industry, but on the breaking side of our business, we wanted
13 to be able to produce where the -- you know, where our
14 contracts and where our relationships were with our customers.
15 Q. And did that meeting result in any sort of agreement to
16 change the 100% rule?
17 A. They were very inflexible and unwilling to make any
18 changes. I was very -- I was very defeated because I thought
19 we could work out a compromise, but there was no compromise.
20 Q. And did you feel that you made your best efforts at that
21 meeting to come up with a solution --
22 A. I did.
23 Q. -- that would work for everyone?
24 A. I did.
25 Q. And were any of the officers of the United Egg Producers

1 there?
2 A. I believe Gene Gregory was there.
3 Q. Now, do you recall roughly when this meeting took place?
4 I guess the committee was appointed in January and the minutes
5 says that the committee should report back --
6 A. It was in early February.
7 Q. -- within 30 days.
8 A. Early February.
9 Q. Now, do you have any recollection of whether at the same
10 time this committee was meeting, the United Egg Producers was
11 continuing to encourage members to join the program as it had
12 been adopted with the 100% rule?
13 A. Yes.
14 Q. And do you recall that at the same time this committee
15 was meeting, there continued to be messages sent out to the
16 membership encouraging them to join the program?
17 A. Yes.
18 Q. Let me -- let me hand you what's been marked as
19 Plaintiffs' Exhibit 20.
20 Do you recognize this document?
21 A. I do.
22 Q. And what is this document?
23 A. This is a document from Gene Gregory, the head of UEP, to
24 all members regarding a controversy that had come up over the
25 fact that because the cages each member has are different.

1 Some people, when they would pull one bird out, would go from
2 53 inches to 67 inches because the cages were very small. And
3 people had very large cages, would have a very little impact
4 on their total number of birds.

5 So there was a compromise made that the industry
6 count the total number of cages in each house and divide by
7 the square inches that you were supposed to be at to give to a
8 building average, which meant that the industry was saying in
9 some cases, I'm going to have some chickens at 53 square
10 inches, but I may have some cages that are either lower than
11 that or higher than that. But the building average over all
12 cages would be at 53 square inches or 56, I should say, on the
13 first step. And it was a way to make the program more fair
14 for every producer.

15 Q. And -- but this was still within the 100% rule, correct?

16 A. Correct.

17 Q. This did not change the 100% rule?

18 A. No.

19 Q. And do you have a personal recollection of this -- of
20 receiving this memo from Mr. Gregory in February 2003?

21 A. I do.

22 MR. NEUWIRTH: Your Honor, we would offer
23 Plaintiffs' Exhibit 20 for the limited purpose of showing that
24 it was sent by the United Egg Producers to Animal Care
25 Certified companies.

1 MR. KING: No objection.

2 THE COURT: Okay, with that limitation, then P-20 is
3 admitted.

4 MR. NEUWIRTH: And if we could put it up with the
5 Court's permission.

6 THE COURT: You may.

7 MR. NEUWIRTH: Thank you.

8 BY MR. NEUWIRTH:

9 Q. This is this February 3rd, 2003 memo that was sent to all
10 the Animal Care Certified companies as you described, and I'd
11 appreciate if you could turn to the second page of the
12 document, the very last paragraph. I think you described that
13 Mr. Gregory, in this earlier part of the memo, had been
14 discussing some challenges that had to be addressed in
15 implementing the program with the 100% rule, correct?

16 A. Correct.

17 Q. And do you see that it says at the end: You should not
18 get discouraged. We believe with 225 million hens committed
19 to the program and the trading of the AHC, animal husbandry
20 certified eggs and the flock reduction that has begun to take
21 effect, egg prices have and will continue to reflect the
22 impact of these welfare guidelines.

23 Do you see that?

24 A. I do.

25 Q. And did you have any feeling about this type of message

1 being sent out at the same time that your committee was
2 meeting to consider changes to the 100% rule?

3 A. I thought it was aggressive, perhaps, too aggressive.

4 Q. And when it says that egg prices have and will continue
5 to reflect the impact of these welfare guidelines, what did
6 you expect -- what did you understand that to mean?

7 A. That as we went up the ladder increasing space over the
8 years, over four to five years, that the number of birds
9 would -- would be reduced in the existing flock. We obviously
10 didn't know if people were going to build new barns or
11 whatever, but the point he's making is that given the flock we
12 have in existence, if we could get more people in this program
13 to continue to follow 56 square inches and later 59 and then
14 61, that eventually people would be having to pull hens out of
15 their cages and reduce the flock size, and I believe increase
16 the price.

17 Q. Now, you said that this Las Vegas meeting to discuss
18 possible changes to the 100% rule didn't yield a compromise.

19 A. No, it did not.

20 Q. So then what happened?

21 A. Well, the only time in the entire time I spent in the
22 industry and on this committee where anything got discussed
23 verbally that tied supply and price was at that meeting. It
24 was in the cafeteria, and it was a comment made by a gentleman
25 named Joe Fortin who worked for the MoArk Corporation, and he

1 told me, Garth, go back and tell Bob, who was good friends
2 with my father, to get on board with this program because
3 you're going to make more money than you ever made.

4 And I was very concerned when he made that comment,
5 because I had not heard anyone directly voice that comment,
6 but he made it to me at a luncheon. And I was very, very
7 concerned as an industry that we were connecting supply with
8 price and that he would make that comment.

9 Q. And this was during lunch at that Las Vegas meeting?

10 A. Correct.

11 Q. And after the Las Vegas meeting, was there any discussion
12 that took place where it was decided that there would be no
13 change to the 100% rule?

14 A. Yes.

15 Q. What was that?

16 A. We were -- we were voted down on -- you know, it's been
17 16 years. I don't remember the specific events that followed
18 after that, because quite -- quite shortly after these events,
19 I left the industry. I -- I -- I didn't want to be involved
20 in this. And so I don't exactly remember the timing. But we
21 were very -- we were very concerned about the third of our
22 business and our contract producers, and so, you know, I guess
23 I don't remember exactly the date that -- we got back -- we
24 reported back that we could not come to a compromise, which
25 effectively left the program as is.

1 Q. Let me hand you what has been marked for identification
2 as Plaintiffs' Exhibit 102.

3 And let me ask if you recognize this document?

4 A. It was -- yeah. It was an update on the flock size.
5 This would be a typical letter that would be sent out monthly
6 in United Voices updating on a whole host of issues.

7 Q. And is this one of the monthly newsletters that you would
8 have received regularly?

9 A. Yeah. Except this one is not dated, but it's from the
10 same time period, but I don't see a date on the front of it.

11 Q. Do you see on the bottom left --

12 A. Oh, there we go.

13 Q. -- first page?

14 A. Yep.

15 Q. And what do you see as the date there?

16 A. February the 27th, 2003.

17 Q. Okay.

18 MR. NEUWIRTH: And, Your Honor, we would move for
19 the admission of Plaintiffs' Exhibit 102 solely for the
20 purpose of establishing that its content was sent to members
21 of the United Egg Producers.

22 THE COURT: On -- with that limitation, any
23 objection?

24 MR. KING: No objection.

25 THE COURT: Then 102 is admitted and may be

1 published.

2 MR. NEUWIRTH: If we could put that up.

3 BY MR. NEUWIRTH:

4 Q. Do you see on the very first page this first story in
5 this United Voices newsletter says: Challenge to 100%
6 Commitment of Welfare Guidelines.

7 A. Correct.

8 Q. And do you see that the last paragraph of that section
9 says: The Animal Welfare Committee met via conference call on
10 February 26th, and concluded that a compromise could not be
11 reached; therefore, UEP's policy of 100% commitment would
12 stand?

13 Do you see that?

14 A. Correct.

15 Q. And do you recall that -- was that the end of this
16 process you undertook?

17 A. It was.

18 Q. And now I think you mentioned earlier that Rose Acre, at
19 some point after you had sent the letter to Mr. Rust back in
20 2000, became involved in the United Egg Producers, correct?

21 A. He did.

22 Q. And did Rose Acre have any role at any point in this
23 Producers Animal Welfare Committee that you were a member of?

24 A. He joined the committee. And I recall he being -- he was
25 quite supportive of the program. I think he got on board. He

1 seemed to be in agreement that the animal husbandry protocol
2 should be followed. And he was also supportive of the seal
3 and the auditing of the program. And he wasn't communicating
4 to me recognizing some of the dilemma that we had.

5 Q. And when you say "he," who are you referring to?

6 A. Marcus Rust.

7 Q. And so does your last answer mean that Marcus Rust, from
8 what you observed, was supportive of the 100% rule?

9 A. I believe so.

10 Q. And when you say you believe so, did your personal
11 observation give you a basis to believe that he was
12 supportive?

13 A. Yeah. We spent a great deal of time in committee talking
14 about the issue of commingling eggs, where a producer could
15 not go on the outside of this program and buy eggs from a
16 noncompliant producer somewhere in the country in order to
17 supply extra large eggs or perhaps mediums that they needed.
18 We -- the committee was mandating a hundred percent compliance
19 or you could not get the seal on your carton.

20 So I believe -- or the committee was supportive of
21 the seal, and also an audit where the USDA would come in after
22 the fact and audit each producer to make sure that we were
23 compliant.

24 Q. And do you recall that under this audit, the only way you
25 could automatically fail the audit is if you failed to comply

1 with cage space facilities at 100 percent of your
2 facilities -- sorry -- the cage space requirements at
3 100 percent of your facilities?

4 A. I recognized that issue, but most of that happened after
5 I left the company. I was -- I was very disheartened by what
6 we had gone through, and shortly thereafter, I left the
7 industry.

8 Q. Okay. Were there any other efforts, before you left, to
9 try to convince Sparboe to support the Certified Program?

10 A. UEP leadership in the form of Al Pope and Gene Gregory
11 flew to Minneapolis and met with my father and I, and they
12 were really leaning on us to join this program -- of full
13 support of the program, and we were very concerned about the
14 implications of the 100% rule, what it would do to supply and
15 ultimately what it would do to prices.

16 Q. And do you recall anything about what Mr. Pope and
17 Mr. Gregory said to you at that meeting in Minneapolis?

18 A. They leaned on us to get on board, that we were outliers,
19 that we were seen as not cooperative within the industry. And
20 we had made compromise and we were willing to follow this
21 program for our carton customers, for our grocery customers.
22 We had compromise that we offered, but there was no
23 willingness to meet us at the 50 yard line, so to speak.

24 Q. Now, one topic we have not discussed today is exports --

25 A. Yes.

1 Q. -- of eggs. During this period when you were -- what
 2 we've discussed today from 1999 to 2003, were you aware of
 3 anything related to exports in the egg industry?
 4 A. I was.
 5 Q. And what do you recall?
 6 A. The egg industry would only put together large exports to
 7 Germany and Holland and Italy and France when the egg price
 8 had been, you know, a very long protracted period low. Very,
 9 very, very rarely did we export eggs when people were making
 10 money, profitable. It was only when the egg market was very
 11 low and people had been losing money for a long period of
 12 time. Then our industry would go to the European marketplace
 13 and offer 3- or 400 container orders at perhaps \$0.25 a dozen
 14 loss. And in the short run, those containers were filled on a
 15 pro rata basis in the UEP by how many hens you had.
 16 So, if you were representing 3 percent of the entire
 17 market, you then had to honor 3 percent of those exports. And
 18 I was very concerned about this because I asked UEP
 19 leadership, Why do we never export eggs in strong financial
 20 times or when the market is high? Why do we always dump eggs
 21 into Europe when everyone is losing money? This is not a good
 22 practice.
 23 And, of course, they didn't want producers
 24 independently producing -- or selling eggs into Europe on
 25 their own. They wanted large block exports which then would

1 have the result of getting eggs out of the United States and
 2 pressing prices higher.
 3 Q. Pressing prices higher in the United States?
 4 A. In the United States.
 5 Q. And how could doing exports get prices to be higher in
 6 the United States?
 7 A. Because those eggs are removed from the US market and 3-
 8 or 400 containers is an enormous amount of eggs. So if eggs
 9 had been very low for six months, a very large order would get
 10 put together and producers would either deliver eggs to
 11 Baltimore or to the East Coast, or they would simply receive a
 12 bill from UEP for their share of the export, and that is the
 13 loss between the current US market and the subsidized price
 14 that we were selling the eggs to in to Europe. And it was
 15 anywhere from 15, sometimes 25 and 30 cent losses that we were
 16 taking in the short run on eggs that we otherwise could sell
 17 to our own customers. Once those eggs got out of the market,
 18 the egg market bounced. And it -- I mean, significant price
 19 increases to the consumer.
 20 MR. NEUWIRTH: Your Honor, I see that it's 4:30.
 21 THE COURT: It is. Is this an appropriate time to
 22 break as far as you're concerned?
 23 MR. NEUWIRTH: Yes, it's appropriate.
 24 THE COURT: Okay. So we will, in fact, then close
 25 for the day, resuming on Monday. A couple of marching orders,